

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2000-592-C - ORDER NO. 2001-1135

DECEMBER 18, 2001

IN RE: Application of Maxtel USA, Inc. for a                    )  
Certificate of Public Convenience and                    )  
Necessity to Operate as a Reseller of                    )  
Interexchange Telecommunications Services.            )

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This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Maxtel USA, Inc. ("Maxtel USA," or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate, interexchange telecommunications services within the State of South Carolina. The Commission's Executive Director instructed Maxtel USA to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Maxtel USA's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Maxtel USA complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on August 22, 2001, at 11:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable William Saunders, Chairman, presided. Scott Elliott, Esquire represented Maxtel USA. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

Darry Adams, Marketing Director, appeared and testified on behalf of the Company. Maxtel, a wholly-owned subsidiary of ezTel, LLC, is a Nevada corporation that has received authorization to transact business within the State of South Carolina. According to the testimony, Maxtel USA is a relatively new company. The Company seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services to the public on a statewide basis. More specifically, the Company seeks authority to offer on a resale basis within South Carolina interLATA and, to the extent authorized by the Commission, intraLATA direct-dialed services including (1+) service, flat rate service, 800 inbound service, and travel cards and prepaid calling cards. Maxtel USA will provide long distance and internet services. The Company has no plans at this time to construct any telecommunications transmission facilities of its own and seeks no construction authority; the Company intends to engage in switchless resale. Maxtel will arrange for the traffic of underlying subscribers to be routed directly over the networks of the Company's network providers.

Adams presented testimony regarding the Company's managerial, technical, and financial resources to provide telecommunications services in South Carolina. According to Adams, Maxtel has sufficient technical, financial, and managerial resources and ability to provide telecommunications services in South Carolina. As a switchless reseller, Maxtel intends to utilize Qwest, MCI WorldCom and Frontier/Global Crossing as its underlying carriers.

Regarding the Company's financial resources to provide telecommunications services, Adams testified Maxtel USA's Board of Directors and original investors are

committed to infuse any funds or capital to insure the business is successful. According to the testimony, the Company does not currently have any debt and the founders of the Company are providing adequate cash.

T. Patric Boggs is the Company's President and Chief Executive Officer. Mr. Boggs was employed with other telecommunications companies prior to joining Maxtel USA. Prior to joining ezTel, Mr. Boggs was the Senior Vice President, National Sales for erbia Network, Inc., a nationwide provider of telecommunications services. Additionally, Mr. Boggs was President and Chief Executive Officer of erbia Communications, Inc. The record also reveals Boggs co-founded and served as President of Carey Communications and he established Advance Communication Techniques. James Palmer is the Company's Chairman of the Board, Danny Dunnaway is the Vice Chairman of the Board of Directors and Lamar Adams is the Company's Secretary of the Board.

Maxtel USA is currently authorized to provide telecommunications services in several states. The testimony reveals the Company is operating in good standing in all the states where it has received authority to provide telecommunications services. Additionally, the Company, as of the date of the hearing, had not received revenues for the completion of intrastate calls in South Carolina nor had the Company marketed its telecommunications services in South Carolina.

Maxtel USA's customer service department handles all customer service requests through the Company's toll free customer service telephone number. Mandy Boggs is the Vice President of Operations at the Company's Call Center in Brookdale, Virginia. The

customer service center's hours of operation are twenty-four hours a day, six days a week – during these hours an employee is available to answer customer inquiries. On the seventh day of the week, the Company's recording machine takes messages of customer inquiries. Maxtel USA uses written letter of authorizations to verify a customer's intent to switch carriers.

The Company's name and telephone number will appear on bills that are sent to customers. Additionally, the Company will market its services to affinity groups, associations and small businesses. The Company will also utilize direct sales and independent agents to market its services.

The Company's regulatory contact persons are Patric Boggs and Alan Hill. Mr. Hill is also the Company's financial contact person. Maxtel USA also seeks a waiver of 26 S.C. Code Ann. Regs. 103-610, which requires the Company to keep its books and records within the State of South Carolina. Maxtel USA seeks to keep its books and records at its principal place of business.

Roy H. Barnette, Auditor, presented testimony on behalf of the Commission Staff. In a Late Filed Exhibit filed with the Commission, Barnette explained that the Audit Staff reviewed the unaudited balance sheet and income expense statement dated December 31, 2000, of ezTel, LLC, the parent of the Company. The income and expense statement showed a net loss on operations for the twelve months ended December 31, 2000. The balance sheet as of December 31, 2000, reflected that cash made up 11% of total assets. The current ratio at December 31, 2000, is a strong 1.73, which means that ezTel, LLC has sufficient current assets to meet its current liabilities. The balance sheet shows no

long-term debt and total equity is positive. In sum, Barnette opined Maxtel USA, with the support of its parent, is in good financial condition to begin operations in South Carolina. Additionally, Barnette opined the financial statement of the parent indicates that ezTel, LLC is able to support Maxtel USA if needed.

David Lacoste, who is employed as an Engineer with the Commission's Staff, also presented testimony regarding the Application and Tariff of Maxtel USA. According to Lacoste, the terms and conditions contained within the proposed tariff are well stated in that they appear to be generally consistent with this Commission's rules and regulations governing telecommunications utilities and other certified interexchange carriers. Lacoste recommended that the Company amend its tariff concerning an apparent requirement that the customer give at least thirty days notice prior to canceling service. Additionally, Lacoste recommended that the Company define the various Programs associated with its prepaid calling card service offerings. Mr. Adams agreed to make the recommended changes to the Company's tariff as requested by Lacoste. Additionally, the Company filed two Late Filed Exhibits whereby Maxtel USA explained its business plans and amended Section 4.4 of its tariff regarding prepaid calling cards.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

### **FINDINGS OF FACT**

1. Maxtel USA is organized as a corporation under the laws of the State of Nevada and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. Maxtel USA is a provider of long distance services and wishes to provide long distance services in South Carolina.

3. Maxtel USA has the experience, capability, and financial resources to provide the services as described in its Application.

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Maxtel USA to provide resold intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for Maxtel USA for its resale of interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Maxtel USA shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. Maxtel USA shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 2000).

4. If it has not already done so by the date of issuance of this Order, Maxtel USA shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, Maxtel USA shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 103-622.1 with its final Tariff.

5. Maxtel USA is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

6. With regard to Maxtel USA's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. Maxtel USA shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Maxtel USA changes underlying carriers, it shall notify the Commission in writing.

8. Maxtel USA shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports can be found at the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). The title of this form is "Annual Information on South Carolina Operations For Interexchange Companies and AOS". Be advised that the Commission's annual report for telecommunication companies requires the filing of intrastate revenues and intrastate expenses.

9. Maxtel USA shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, Maxtel USA shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Maxtel USA shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at



[www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms); this form shall be utilized for the provision of this information to the Commission. Further, Maxtel USA shall promptly notify the Commission in writing if the representatives are replaced.

10. With regard to the origination and termination of toll calls within the same LATA, Maxtel USA shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. By its Application and testimony at the hearing, Maxtel USA requested a waiver from the Commission's requirement to maintain its books within the State of South Carolina according to 26 S.C. Code Ann. Regs. 103-610 (1976). The Commission grants Maxtel USA's request to waive the record keeping regulation so that its books and records may be kept at its principal office and headquarters.

12. As a condition of offering debit card services, the Commission requires the Company to post with the Commission a bond in the form of a Certificate of Deposit worth \$5,000 drawn in the name of the Public Service Commission of South Carolina or a surety bond in the amount of \$5,000 which is payable to the Commission. The Certificate of Deposit shall be drawn on federal or state chartered banks or savings and loan associations which maintain an office in this State and whose accounts are insured by either the FDIC or the Federal Savings and Loan Insurance Corporation. A surety

bond shall be issued by a duly licensed bonding or insurance company authorized to do business in South Carolina. This condition may be reviewed in one year.

13. If the Company sells its debit cards to retail establishments for resale of the debit cards, and the retailer of the debit cards deviates from the suggested retail price as filed in the tariff, or as approved by the Commission in a special promotion, then the Company will withdraw its cards from that retail outlet. This Commission strongly suggests that the Company enter into written agreements with its South Carolina retail outlets regarding this policy of abiding by suggested retail pricing prior to the outlet marketing the card.

14. Maxtel USA is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)